State of Nebraska

Legislative Mental Health Care Capacity Strategic Planning Committee

Inpatient Mental Health Care Bed Capacity Review

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RURAL POLICY PARTNERS

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Executive Summary

Much has been said about the ongoing concerns and challenges related to the increased legal involvement and subsequent incarceration of individuals with multi-occuring mental health and substance use conditions. The court-related disruptions and subsequent mental health crises following the pandemic have highlighted a system that is ill-equipped to meet the needs of this growing population equitably across the state.

This report aims to synthesize and prioritize recommendations to address current and ongoing bed needs, evaluate the role of the existing state hospital facility(s), and examine how the efficiency of competency evaluation and restoration programs affect the timely resolution of cases impacting local jails and court systems. The policy recommendations provided for consideration are designed to create efficiencies and expedite timely court-mandated evaluation and care.

The initial charge in the Request for Proposal, based upon LB921 and Nebraska Revised Statute § 50-702, was to assist the Legislative Mental Health Care Capacity Strategic Planning Committee in determining the necessary capacity for inpatient mental health care beds for both state-operated and privately-owned facilities, according to best practices in mental health care. The charge also included providing recommendations to achieve the necessary capacity if the current state inpatient mental health bed capacity is found to be insufficient.

Key objectives included:

1. Identifying the number, types, specialties, and locations of recommended beds in the state, considering current and projected utilization levels.
2. Evaluating opportunities for enhanced psychiatric service delivery to reduce overutilization of intensive, inpatient beds and decrease the number of patients housed in local jails.
3. Reviewing and providing an overview of the levels of care defined as “inpatient”.

The following solutions represent the most efficient path forward, based on our review of the current system and the landscape analysis conducted through a review of current literature, meetings with the Department of Health and Human Services, provider stakeholders, judicial staff, and residents with lived system experience.

The solutions developed for this report are not comprehensive. A thorough review of the entire behavioral health continuum, mapping interactions, and identifying opportunities for prevention and diversion at each intervention point is needed. The rising demand and pressures on the entire criminal justice system is a challenge not just in Nebraska, but nationwide. Individuals with untreated, complex behavioral health needs, without access to local support and specialized community-based care will increasingly overwhelm other related systems, including law enforcement, jails, prisons, and the judicial system.

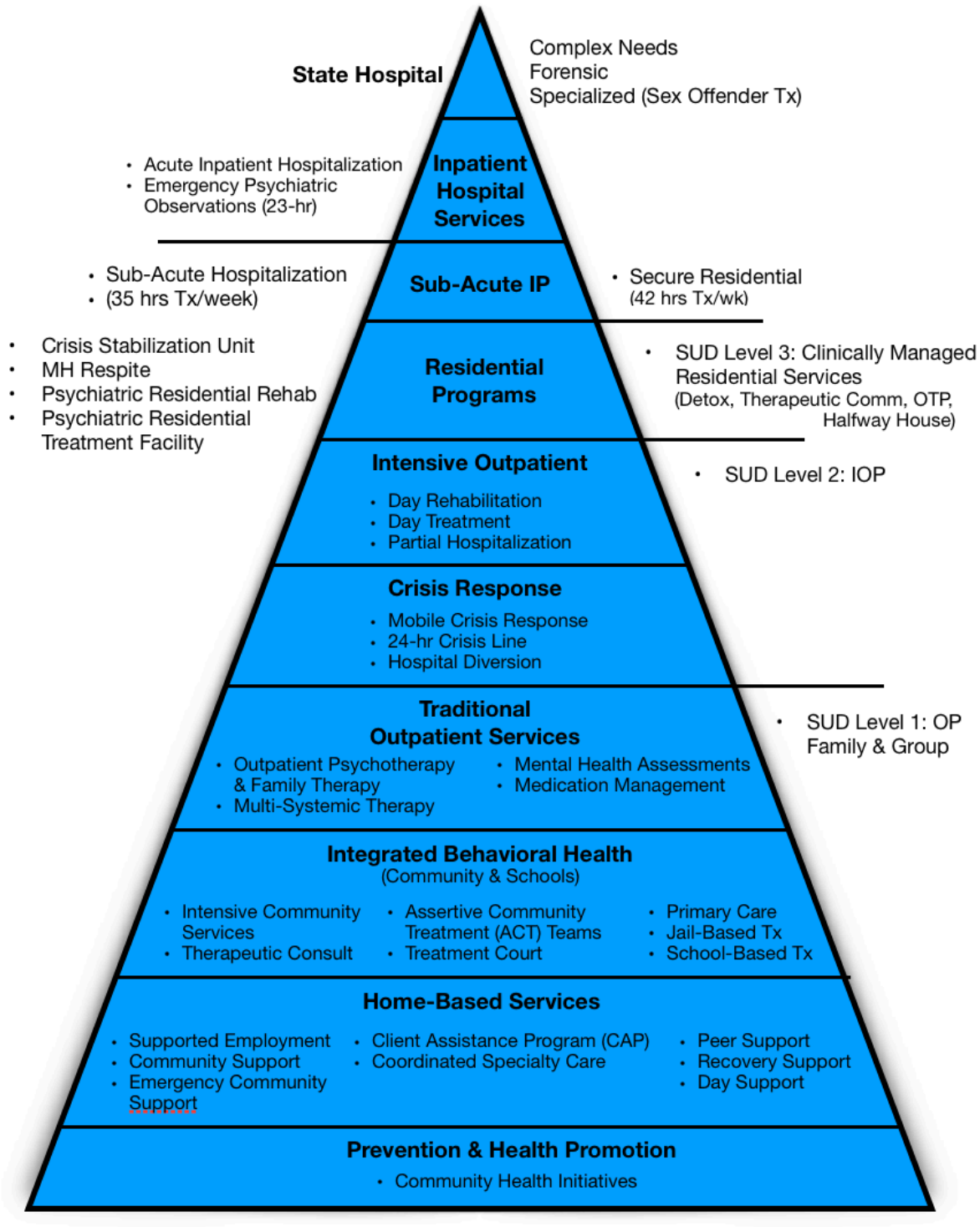

Figure 1 Nebraska Continuum of Care

It is important to recognize that therapeutic inpatient treatment is not the same as competency restoration. In a criminal justice setting, the courts are generally focused on the short-term goal of preparing the defendant to face trial, typically with an emphasis on medication management and education about the criminal court process. The approach serves the needs of the courts, not the well-being of the individual. In contrast, inpatient treatment is a component of the continuum of care necessary to support individuals with complex, multi-occuring behavioral health conditions in stabilizing and managing their disease with the goal of long-term wellness and recovery.

When determining bed capacity, it is essential to acknowledge the competing interests for the same institutional inpatient beds. The appropriate placement and utilization of the most intensive institutional and inpatient levels of care must be scrutinized to maximize capacity and system responsiveness. Not every individual needs the highest, most intensive level of institutional and/or inpatient care by default.

The interconnectivity between criminal justice-involved individuals and the responsiveness of the behavioral health continuum of care, developed and managed by the Nebraska Department of Health and Human Services, must be reviewed. New treatment pathways should be implemented with the support of, and tailored to, the needs of the criminal justice and judicial system.

Additionally, it is important to note that many states are struggling through numerous legal challenges related to the criminalization of individuals with behavioral health needs. The quality, accessibility, and timeliness of care are systemic issues that must be addressed across the entire continuum of care, beginning in every community and courtroom across the state. The interactions among local law enforcement, hospitals, mental health boards, providers, schools, and the courts must be coordinated to ensure access to the right care, in the right place, at the right time.

A truly aligned system of care shifts resources to local communities and creatively addresses workforce challenges head-on. Providing care, including early intervention close to home and earlier in a person's disease progression, reduces the likelihood of further system involvement, legal challenges, and the need for more restrictive and intensive levels of care.

The solutions presented below outline areas of focus to develop a systemic approach that balances the need for costly institutional beds with the development of alternative pathways and diversions from institutional care and incarceration.

A list of identified barriers was discovered during feedback sessions and subsequent code review. The solutions below directly address critical gaps in the behavioral health continuum of care, as well as specific challenges courts face due to the increased volume of competency evaluations and restorations. Competency restoration currently consumes the most resources at the Lincoln Regional Center. We are in agreement with the Nebraska Department of Health and Human Services that the number of beds available to them to be utilized is more than adequate. However, without appropriate system management and rapid development of a responsive, funded, and equitable continuum of community-based behavioral healthcare, no matter how many beds exist in Nebraska, there will never be enough.

Solution #1: Define the Role of the Lincoln Regional Center: Core Focus and Population Served

Legislation Focus:

Amend Neb. Rev. Stat. § 83-338 to clearly define the population and core focus of state institutions (beyond those served at Lincoln Regional Center (LRC)), emphasizing complex needs, long-term care, and specialty populations. This includes:

- Sex Offenders
- Individuals with Complex Needs Requiring Long-Term Intensive Specialty Care
- Forensic Patients (those undergoing competency evaluation/restoration, those found not guilty by reason of insanity, etc.)

State institutions should not provide general acute inpatient care, which is primarily funded by the state Medicaid system or through Nebraska DHHS contracts with private sector providers. Nebraska DHHS does offer varying definitions of acute inpatient care. There is currently a major project to update all the DHHS behavioral health and substance use disorder service definitions. The project includes reviewing service definitions and comparing them to the Medicaid State Plan, mental health substance use disorder state regulations, and the Division of Behavioral Health's Continuum of Care Manual. Presently, discrepancies exist in defining inpatient care. The first is referenced in the Nebraska Continuum of Care Manual for Mental Health and Substance Use Disorders (revised July 2024). The second definition is found in the Medicaid Behavioral Health Service Definition listing.

By clearly defining the core focus, target population, and role of the state hospital in specialty and indigent care, the legislature can grant DHHS sufficient authority to flexibly meet evolving needs within its legal scope. Supporting legal pathways for DHHS to increasingly outsource and utilize private sector providers for inpatient and residential care, when appropriate, provides the state with significant cost savings and better capacity management. This strategy also allows for residential and inpatient care to be funded by alternative sources, ultimately increasing system capacity and responsiveness.

Additionally, eliminate sections of Neb. Rev. Stat. § 83-338 that dictate specific bed allocations at LRC, as these stipulations hinder operational effectiveness and limit the ability of DHHS to respond to current needs. This recommendation highlights the importance of granting DHHS the authority to adapt to changing demands, such as shifts in the population served or new treatment methodologies. Flexibility is critical for maintaining a responsive and effective state hospital system, enabling LRC to optimize its capacity and improve patient outcomes based on current needs rather than being constrained by statutory requirements.

Solution #2: Maximize Medicaid/Medicare and Waivers as Funding Streams to Fully Implement a Behavioral Health Continuum of Care

Legislation Focus:

Support the Development of Medicaid-funded Sub-Acute, Residential, Specialty Nursing Home and Safe Housing Programs

Provide funding to develop these programs as alternatives to inappropriate hospitalization and to reduce delays in patient transitions. This includes creating community-based intensive residential levels of care that can serve adults with the most severe and persistent multi-occurring mental health conditions in the appropriate least restrictive setting.

Expand Use of Braided Federal and State Funding

Promote the ongoing expansion of funding for community behavioral health providers to deliver outpatient and jail-based competency restoration services. This approach would help ensure that individuals receive timely and appropriate care. In rural and underserved communities enticing providers to partner in new and innovative ways provides greater system efficiency. This includes developing new partnerships and stacking services to meet the needs of the individual.

Solution #3: Civil and Criminal Justice Reform

Legislation Focus:

Incentivize ongoing review, utilization, and fund expansion of problem-solving courts § 24-1302 that include Re-entry, Veterans, Mental Health, Driving Under the Influence (DUI), and other problem-solving courts.

Identify and recommend improvements to Neb. Rev. Stat. § 29-1823 to address court-related delays.

- Propose reforms to improve transitions, streamline reporting, and speed up decision-making processes to ensure timely transfers of individuals to the appropriate level of need (i.e., patients that have competency restored and no longer need specialty care or those that are determined by the DHHS to have care managed by a contracted third party partner).
- Amend subsection (2)(a) to reduce the court response from 21 days to no more than 5 days.
- Amend subsection (3) to require that within 5 days of the department filing a report outlining its opinion the court will hold a hearing to determine if the defendant is competent to stand trial.
- Strike (2)(b). The department in (2)(a) determines the course of treatment.

Increase communication and transparency across the court system.

- Amend Neb. Rev. Stat. § 71-931(3), § 71-937, § 71-919 to require that written communication be submitted to the court. The current requirement is that information be submitted only to the county attorney.

Include Nebraska DHHS in future risk assessments and evaluations.

- Legislate that DHHS is involved in criminal justice planning activities such as the future risk assessment tools and evaluations as identified in Neb. Rev. Stat. § 83-180.01.

Convene workgroup to develop legislation for emerging alternatives.

- Establish a workgroup to draft legislation that clarifies how new alternatives, considering options such as authorizing dismissal upon civil commitment with Assisted Outpatient Treatment (AOT), including outpatient competency restoration, are to be implemented.
- Address the lack of clarity in the Nebraska Mental Health Commitment Act Neb. Rev. Stat. § 71-901 to 71-964 and Neb. Rev. Stat. § 29-1823, which currently do not provide a clear pathway for using diversion and intensive community-based services statewide. A clear pathway that is understood by prosecutors and judges is necessary for greater utilization of diversion and intensive community-based services statewide. Currently, system redundancy and related inefficiencies overly complicate access to timely appropriate care and do not adhere to the least restrictive setting regulations for individuals with diagnosable mental health conditions. Texas, Utah, Ohio, Florida and Nevada have all passed legislation in recent years to increase utilization of Assisted

Outpatient Treatment. Some states have gone as far as legislating state institutions will only serve those with the most complex needs. All others are referred to the private sector only to be served in community-based settings with oversight from Nebraska DHHS.

Solution #4: Diversion, Reentry and Transition

Legislation Focus:

Support for Seriously Mentally Ill and Geriatric Patients

Task the Department of Health and Human Services with creating long-term, community-based support options for seriously mentally ill and geriatric patients, including geriatric sexual offenders. Additional levels of care must be added to the care continuum that can manage complex needs in the least restrictive community-based setting possible. The lack of appropriate long-term step-down solutions promotes recidivism and overtaxes the limited resources of the state institutions.

Expand Use of Sequential Intercept Model (SIM)

Broaden the implementation of SIM throughout the criminal justice system by leveraging regional behavioral health authorities. Consistent statewide application of the SIM can enhance community safety, reduce criminal justice interventions, and make better use of local communities' unique resources. Although significant resources and planning were devoted to the Nebraska Justice Behavioral Health Initiative Strategic Plan over a decade ago, it appears that the plan was never fully implemented. The priorities set in 2008 remain highly relevant today.

Evaluate and Update Neb. Rev. Stat. § 71-809 Regarding the Role of Regional Behavioral Health Authorities

Reassess the role of regional behavioral health authorities in developing system readiness, identifying gaps, and ensuring high-quality care and equitable access statewide. Include provisions for better coordination with the criminal justice system to enhance overall effectiveness and impact.

Clarify Neb. Rev. Stat. § 83-109 to Enable DHHS to Divert

Amend Neb. Rev. Stat. § 83-109 to clarify the authority of DHHS to divert non-violent and lower-risk individuals to appropriate community-based private providers. This change will help ensure that care is provided in the least restrictive environment, thereby preserving the availability of high-need specialty beds at state institutions for those who require intensive, specialized care.

Solution #5: Promote the Coordinated and Comprehensive Implementation of Certified Community Behavioral Health Clinics (CCBHC) Across Nebraska

Legislation Focus:

CCBHCs are designed to provide comprehensive, integrated care for individuals with mental health and substance use disorders. The primary purpose of CCBHCs is to ensure access to a full range of mental health and addiction services, including crisis intervention, outpatient care, primary care screening, peer support, and care coordination, regardless of an individual's ability to pay. By serving as a central hub for both behavioral and physical health care, CCBHCs aim to improve health outcomes, reduce barriers to care, and lower costs associated with emergency room visits, hospitalizations, and involvement in the criminal justice system. They emphasize collaboration among providers and community organizations to create a more coordinated, patient-centered approach to care.

Nebraska's CCBHC implementation documents provide a strong foundation for integrating physical and behavioral health services to support local communities. However, the success of these efforts relies on having sufficient providers statewide, as well as a comprehensive, coordinated planning and design process. Without this, fragmentation will undermine the overall benefits of the program.

Instruct Nebraska DHHS to assess the impact of the CCBHC Act Neb. Rev. Stat. § 71-801 and associated cross-system planning, needs assessment, and design, specifically related to law enforcement, criminal justice, state institutions, and acute care transition planning.

Workforce enhancement funding will be required to ensure adequate capacity building across Nebraska. These funds should be directly tied to supporting the workforce necessary to ensure the core programs of the CCBHC are equitably accessible to al Nebraska residents.

Conclusion

Overall, each step of the care continuum should address the needs of the individual in the least restrictive environment necessary. Timeliness and due process must be prioritized and established as system-wide expectations. Our review indicates that delays in system transitions, a lack of timely decision-making, and insufficient accountability across the criminal justice and behavioral health care continuum create confusion and increase the likelihood of poor outcomes and recidivism.

The number of beds currently managed by DHHS is adequate for the state of Nebraska if systemic measures are implemented to manage throughput effectively. We believe that common-sense steps – building upon established pilots such as outpatient competency restoration and system transformations such as CCBHCs – will, if properly funded and equitably implemented, provide much-needed relief to these overwhelmed systems. Statewide implementation expectations and guidance must be legislated. The fact that it may be challenging does not mean that every Nebraska resident should not have access to reasonable, timely, and appropriate behavioral healthcare, whether court-involved or not.

Appendix A Review of Published Work

The Council of State Government Justice Center Just and Well: Rethinking How States Approach Competency to Stand Trial (October 2020)

Grading the States: An Analysis of U.S. Psychiatric Treatment Laws, Treatment Advocacy Center 2020

NAMI 2023 State Legislation Issue Brief Series, Trends in Mental Health and Criminal Justice State Policy

Meeting the Needs of Justice-Involved People With Serious Mental Illness Within Community Behavioral Health Systems. Psychiatric Services, Bonfine, N., Wilson, A. B., & Munetz, M. R. (2020). 71(4), 355–363. https://doi.org/10.1176/appi.ps.2019004

Nebraska DHHS Behavioral Health Strategic Plan 2022-2024

Nebraska Mental Health Board Reference Manual; A Legal and Clinical Overview of Nebraska Commitment Laws, Nebraska DHHS, May 2024

Nebraska Mental Health Court Best Practice Standards, Nebraska Supreme Court Administrative Office of the Courts and Probation April 2020

Nebraska DHHS Continuum of Care Manual for Mental Health and Substance use Disorders July 2022

Nebraska's Criminal Justice System: Urgent Challenges & Proposed Policy Solutions prepared by Crime and Justice Institute February 2023

Nebraska Criminal Justice Reinvestment Working Group Final Report, January 2022

Nebraska DHHS Annual Physical Review of State Institutions, December 2023

Nebraska, Report of the Mental and Behavioral Health Task Force (LR 413) December 2016

Myers and Stauffer Adult Facility System Redesign Report, November 2021

Policy Research Associates Inc.'s Competence to Stand Trial microsite with tools and resources to reform CST

SAMHSA's webpage on Sequential Intercept Model Mapping

State Justice Institute, Improving the Justice System Response to Mental Illness Interim Report, April 2020

Substance Abuse and Mental Health Services Administration. (2023). Foundation work for exploring incompetence to stand trial evaluations and competence restoration for people with serious mental illness/serious emotional disturbance. HHS Publication No. PEP23-01-00-005. Rockville, MD: Substance Abuse and Mental Health Services Administration.

Substance Abuse and Mental Health Services Administration: Principles of Community-based Behavioral Health Services for Justice-involved Individuals: A Research-based Guide. HHS

Substance Abuse and Mental Health Services Administration, 2019. Publication No. SMA- 19-5097. Rockville, MD: Office of Policy, Planning, and Innovation.

Treatment Advocacy Center: Our Stories Matter: Experience with the State Hospital System, June 2024

Treatment Advocacy Center: Prevention Over Punishment: Finding the right Balance of Civil and Forensic State Psychiatric Hospital Beds, January 2024

University of Nebraska Medical Center College of Behavioral Health: Nebraska Behavioral Health Needs Assessment September 2016

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